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U.S. COURT OF APPEALS

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Lupita Connor
PO Box 343
Notus, Idaho 83656

JAN 22 2013
FILED 1/23/13 HK
DOCKETED DATE INITIAL

IN THE NINTH CIRCUIT COURT OF APPEALS

LUPITA CONNOR
PETITIONER,

13-70272
PETITION FOR EXTRAORDINARY WRIT
GRANTING, EXPUNGEMENT

V.S.

CANYON COUNTY, STATE IDAHO, ET AL
RESPONDANT

COMES NOW the defendant and PETITIONS FROM EXTRA ORDINARY

WRIT OF EXPUNGEMENT this court to grant a motion for expungement of the charge (s) in
the above said case based on the following grounds:

1. IN CASE NO. CR-2005-0006349-C Petitioner's rights are being violated and her name should be cleared based on;
1. The following Idaho codes, Idaho cases, U.S. precedents, U.S. cases and points support this amended motion: ID Code § 19-5513 (2011 through Reg Sess), Idaho Code 19-2604, 19-2604, I.C.A.R. 32(i), I.C.A.R. 32(a), State v. Knapp, 139 Idaho 381, 79 P.3d 740 (Ct. App. 2003), overruled by State v. Kimball, 145 Idaho 542, 181 P.3d 468 (2008) and the articles of the Idaho Constitution 1-9, and pursuant to Idaho case and point Idaho v. Gary L. Turpan, in which the court ruled, noted, and or took judicial notice of following :As a preliminary matter, we find it appropriate to define the manner in which we use the words "expunge" and "expungement." Our use of these words is not literal. "Expunge" is defined as follows: "To destroy; blot out; obliterate; erase; efface designedly; strike out wholly. The act of physically destroying information – including criminal records – in files, computers, or other depositories." BLACK'S

LAW DICTIONARY 522 (5th ed. 1979), and that expungement criteria is set forth as (1) That the documents or materials contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person, or (2) That the documents or materials contain facts or statements that the court finds might be libelous, or (3) That the documents or materials contain facts or statements, the dissemination or publication of which would reasonably result in economic or financial loss or harm to a person having an interest in the documents or

materials, or compromise the security of personnel, records or public property of or used by the judicial department, or (4) That the documents or materials contain facts or statements that might threaten or endanger the life or safety of individuals.

2. Extraordinary circumstances exist in this case because the charges were misfiled by police and prosecutors at the off-set of this case, and the court did not fix this until after the defendant had entered into a plea agreement and plead guilty which thus violates her right to know charges, compulsory process rights, and her due process rights pursuant to the 5th Amendment and 6th and 14th Amendments of the U.S. Constitution because it is an abuse of discretion for a judge to change a charge or amend a complaint after the plea of guilty has been entered especially in the event of stipulation agreement between the parties. The Sixth Amendment (Amendment VI) to the United States Constitution is the part of the United States Bill of Rights which sets forth rights related to criminal prosecutions. The Supreme Court has applied the protections of this amendment to the states through the Due Process Clause of the Fourteenth Amendment. In all

~~the defendant shall enjoy the right to a speedy and public trial, by an~~
~~impartial jury of the State and district wherein the crime shall have been committed, which~~

district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his or her defense. A defendant has the right to be informed of the nature and cause of the accusation against him or her. Therefore, an indictment must allege all the ingredients of the crime to such a degree of precision that it would allow the accused to assert double jeopardy if the same charges are brought up in subsequent prosecution. The Supreme Court held in *United States v. Carll*, 105 U.S. 611 (1881) that “in an indictment ... it is not sufficient to set forth the offense in the words of the statute, unless those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished.” Vague wording, even if taken directly from a statute, does not suffice.

3. The defendant completed all sentencing requirements impeccably and paid all court costs and fines. This amended motion is filed pursuant the following case laws: that the court has the right to grant expungements. Its inherent powers to expunge a record in instances of extraordinary circumstances, such as illegal prosecutions, arrests under unconstitutional statutes, or where necessary to vindicate constitutional or statutory rights.” *Griffin v. City of Bowling Green*, 458 S.W.2d 456, 457 (Ky.1970). Here, the words of KRS 431.076 are clear and unambiguous. They plainly state that records can be expunged when there is a verdict of not guilty or when a case is dismissed with prejudice. case law says that a court can expunge judicial and executive records in instances that do not have statutory authority. *U.S. v. Doe*, 556 F.2d 391, 393 (6th Cir.Ohio 1977), court can use its inherent powers to expunge a record in instances of extraordinary circumstances, such as illegal prosecutions, arrests under unconstitutional statutes, or where necessary to vindicate constitutional or statutory rights. *U.S. v. Gillock*, 771 F.Supp. 904, 908

(W.D.Tenn.1991). Commonwealth v. Shouse, 183 S.W.3d 204 (Ky.App.2006). While this remedy does not rise to the level of an expungement, it does provide for some relief. Due Process of rights of the U.S. Constitution Federal and Stated 5th Amendments are afforded to all citizens; all case law from circuit and US Supreme Court have set precedents as they are the highest courts in the land. Also cited below is Idaho Code related to expungement and or sealing of records. The defendant is not a habitual criminal, and does not have an extensive record.

State of Idaho)

S.S.

County of Canyon)

On this 27 day of July in the year of 2013, before me,

[Signature],
personally appeared and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledge that he executed the same.

T. Michael Alderman
Notary Public

My Commission Expires on 10/29/18

